

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 13^b DAY OF Jan, 2011)

Hon'ble Mr. Justice S.C. Sharma-JM
Hon'ble Mrs. Manjulika Gautam-AM

Original Application No.1425 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

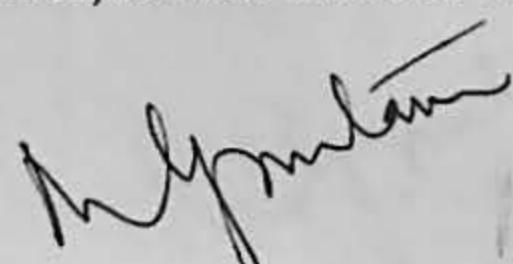
Manju Srivastava Daughter of Sri O.P. Srivastava, resident of 91-B Kawa Bagh Colony, Gorakhpur.

..... Applicant

Present for Applicant : Shri S.K. Om

Versus

1. Union of India, through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Anand Kumar Khare, presently working as Assistant Personnel Officer, East Central Railway Hajipur.
4. Sri Panna Lal, presently working as Assistant Personnel Officer, North Eastern Railway, Lucknow.
5. Stayendra Vikram Singh, presently working as Assistant Personnel Officer, East Central Railway, Hajipur.
6. V.N. Upadhyay, Assistant Personnel Officer, North Eastern Railway, Gorakhpur.
7. Pradeep Kumar Srivastava, presently working as Chief Welfare Inspector, C/o Railway Gorakhpur.
8. Sri A.N. Srivastava, presently working as Personnel Inspector c/o Chief Personnel Officer, North Eastern Railway, Gorakhpur.



9. S.K. Sinnha, presently working as Personnel Inspector C/o Chief Personnel Officer East Central Railway, Hazipur.
10. Mohammad Shamim Akhtar, presently working as Office Superintendent Grade-II, C/o Chief Personnel Officer North Eastern Railway Gorakhpur.
11. General Manager, North Eastern Railway, Gorakhpur.

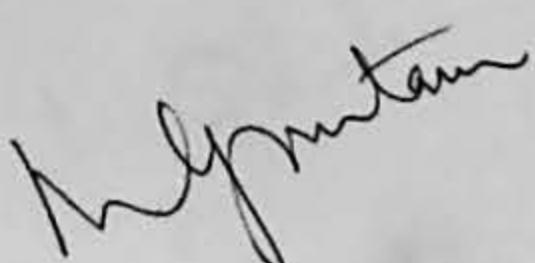
..... Respondents

Present for Respondents : Shri K.P. Singh

ORDER

By Hon'ble Mrs. Manjulika Gautam, Member-A

The Applicant was initially appointed as Junior Clerk on 22.08.1980 and at the time of filing the O.A. she was working as Office Superintendent Grade-I in the Railways. The Applicant is also physically handicapped to the extent of 65% as she is suffering from Polio. On 24.06.2003, a notification was issued for 08 posts of Assistant Personnel Officer in Group 'B' services against 70% quota, notification is placed at Annexure A-1. Out of 08 posts, there were 07 posts for General and 01 for S.C. and no quota was kept for handicapped (disabled) candidate. The Applicant participated in the written test held on 24.06.2003 and was declared successful and was directed to appear for medical fitness and vivo voce test on 29.10.2003. The Applicant, it must be pointed out here, is a general candidate and participated in the written test and vivo voce as a general candidate and when the final panel was declared for the

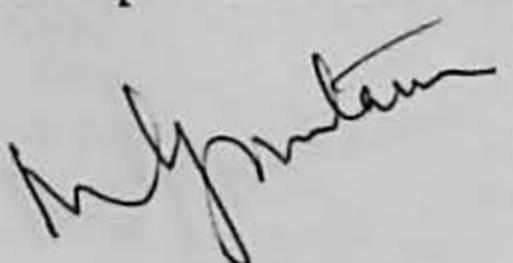


post of Assistant Personnel Officer on 03.11.2003, the name of the Applicant was not shown in the panel. The present O.A. has been filed as a consequence of non inclusion of her name in the panel for Assistant Personnel Officer.

2. The case of the Applicant is that she has qualified the written test, she has performed well in the vivo voce and her service record is good and yet the persons, whose names figured in the panel are junior to her. The Applicant in the O.A. has also stated that selection was unfair and that several complaints were made in the Newspapers regarding the selection. The Applicant has also stated that as handicapped person, she should have been placed in the panel according to Railway Board Circular dated 25.10.2000, placed at Annexure A-5, in which it is clearly stated that in Group 'C' and 'D' post there will be 3% reservation for handicapped and for Group 'A' and 'B' post reservation for handicapped will be to the extent of 3% of the post identified for such reservation. Accordingly, the Applicant has sought the following relief in the present O.A., which reads:-

"(i) to issue a writ order or direction in the nature of certiorari quashing the Penal dated 3.11.2003 issued by Respondent No.1 and 2 (Annexure-3 to this Original Application)

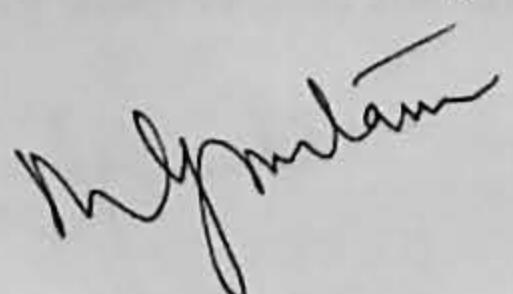
(ii) to issue a writ, order or direction in the nature of mandamus commanding the Respondents to consider the petitioner for promotion to the post of Assistant



Personnel Officer, under 70% quota in pursuance to notification dated 24.06.2003.

- (iii) to issue a further writ, order or direction in the nature of mandamus commanding the Respondents to extend 3% physically handicapped reservation quota in the present selection.
- (iv) to grant all the consequential relief for which the petitioner is entitled for.
- (v) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the present case.
- (vi) award the cost of the petition.
- (vii) to issue a writ order or direction in the nature of certiorari quashing the notification dated 24.06.03 issued by Respondent No.2, to the extent it does not provide any quota for handicapped employees and thereby direct the Respondents to provide 01 post against the said quota in the panel dated 03.11.2003 otherwise the Applicant shall suffer grave and irreparable loss. "

3. In the counter affidavit filed by the Respondents it is stated that it is not to be presumed that those candidates, who passed the written test and were called for vivo voce would be included in the panel. It has been stated that 25 marks each were allotted for vivo voce and record of service and after combining both, 30 marks out of 50 have to be secured by a candidate to be placed in the panel. Since the Applicant, in the present O.A. could not secure 30 marks out of 50 in total of service record and vivo voce, her name could not be included in the panel. It has also been stated that the selection proceedings were not *mala fide* and complaints of unfair means has been enquired into by the Competent



Authority and the selection proceedings were found to be in order. The Respondents also stated that they are ready to produce the record of the selection proceedings before the Tribunal, if so required. It has also been categorically stated by the Respondents that there is no handicapped quota in promotional grade in the Railways and that 3% quota for the handicapped has been fixed in direct recruitment for non gazetted post. The post of Assistant Personnel Officer is a promotion post and therefore, there is no handicapped quota in the same.

4. In the Supplementary Counter Affidavit filed by the Respondents, it has been again reiterated that there is no handicapped quota in promotional grade and reservation for physically handicapped person in identified grade 'A' and 'B' post is only for those posts, which are filled through direct recruitment. They have placed reliance on Annexure RA-8 dated 28.06.2000 as well as O.M. from the Department of Personnel and Training dated 18.02.1997.

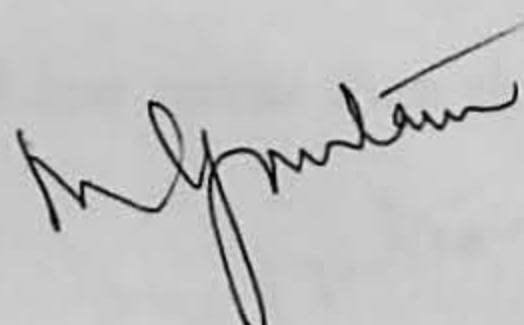
5. We have heard both the counsel for the parties and perused the pleadings on record.

6. Counsel for the Applicant vehemently argued that the policy of the Railway Board was for reservation for the handicapped in Group 'A'

W. H. Johnson

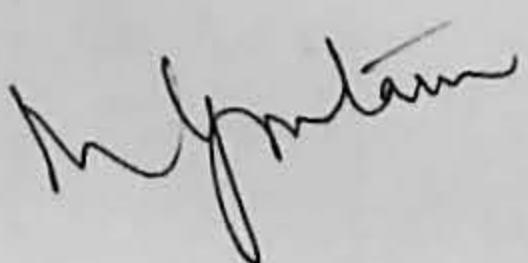
and 'B' post also and if they had not been identified, then at the time of selection identification, should have been done and that the Applicant could not be denied her right as a handicapped persons because of delay by the Railway.

5. Counsel for the Respondents, on the other hand, stated that the Applicant has filed the O.A., after she was declared unsuccessful. Before that she willingly participated in the written examination, vivo voce, medical test and at no point of time before declaration of the panel did she ask for consideration of as a handicapped quota. Counsel for the Respondents has cited the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla** (AIR 1986 SC 1043), All India SC & ST Employees Association & another v. A. Arthur Jeen & Others (AIR 2001 SC 1851), **Raja Ram & others v. Union of India & Others** (O.A. No.272 of 2007), **Bhim Singh & others v. Union of India & others** (O.A. No.18 of 2006) and **Union of India & others v. Vinod Kumar & others** (AIR 2005 SC 5) and according to these rulings, Applicant who has participated in the selection processes cannot complaint of the illegality after the result has been declared and he/she has not qualified. It has also been brought on record that the post of Assistant Personnel Officer was a promotion post and that handicapped quota is only for

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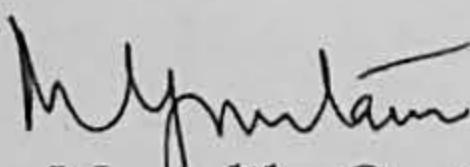
direct recruitment post in the Railway, therefore, the question of giving the benefit to the Applicant does not arise.

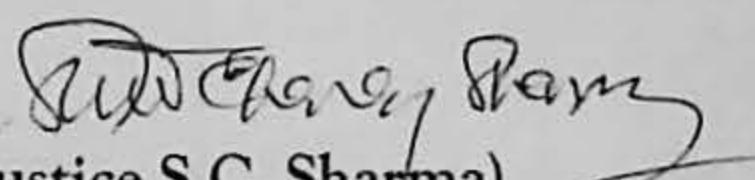
7. The record of selection proceedings has also been placed on record by the Respondents. We have perused the same and found that in the examination for the post of Assistant Personnel Officer Grade 'B' the written test carrying 150 marks and qualified marks were 90. Vivo voce and record of service carrying 25 marks each and qualified marks was 30 out of 50 including at least 50 marks for record of service. The selection process with regard to the Applicant is placed at Sl. No.05 of the tabulation sheet. According to it the Applicant secured 95 marks out of 150 in the written examination, 19.3 marks out of 25 in the record of service and 07 marks out of 25 in the vivo voce. Her total marks are 121.3 and she has been declared unfit, because she could not secure 30 marks out of 50 in vivo voce and record of service. Thus, it is clear from the record that her name has not been included in the panel because of poor marks in the vivo voce where she secured only 07 marks out of 25. As a measure of abundant precaution it has also been seen that several other candidates apart from the Applicant had also secured 07 marks in the vivo voce, therefore, on the basis of record available it could in no way be said that the Applicant was penalized or discriminated in any way. She secured less marks than the required qualifying marks in the



vivo voce and service record and therefore, she could not be declared successful in the panel.

7. Keeping the above facts in mind, we are of the opinion, that no injustice have been done to the Applicant and therefore, no case is made out in her favour. There is no reservation on promotional posts. She appeared in the selection process as a general candidate and on the basis of her performance, she had not been selected. Therefore, there is no need for any interference in the matter. O. A. is accordingly dismissed as having no merits. No costs.


(Mrs. Manjulika Gautam)
Member-A


(Justice S.C. Sharma)
Member-J

Sushil